

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE § § CASE NO. 14-10447-TMD
Fired Up, Inc. § § CHAPTER 11
DEBTOR § §

**OBJECTION TO DEBTORS AND UNSECURED CREDITORS
COMMITTEE'S JOINT PLAN OF REORGANIZATION**

TO THE HONORABLE TONY M. DAVIS, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Independent Bank (the "Bank"), a secured creditor of the estate under Class 8 and unsecured creditor under Class 12 under the Debtor's and Unsecured Creditor's Committee Chapter 11 Plan of Reorganization dated September 30, 2014 (the "Plan"), and files this objection to confirmation of the Plan, and in support thereof would show the Court as follows:

1. On or about March 27, 2014, Fired Up, Inc., d/b/a Kona Restaurant Group, Inc. ("Debtor"), filed a petition for an order for relief under Chapter 11 of the Bankruptcy Code, Title 11 U.S.C.
2. At the time of filing the Chapter 11 petition, the Bank held a Promissory Note executed on December 10, 2008, in the original principal amount of EIGHT HUNDRED TWELVE THOUSAND DOLLARS (\$812,000.00) ("Note No. 1").
3. Thereafter, on December 5, 2011, the Debtor executed a Modification and Extension of Note No. 1 extending the term of the Note to December 5, 2016 (the "Modification").
4. With respect to Note No. 1 and Modification, the indebtedness is secured by a Deed of Trust dated December 10, 2008, and executed by Debtor on real estate with all improvements locally known as 3050 Silverlake Village Drive, Pearland, Texas 72584 (the "Deed of Trust").
5. The indebtedness is additionally secured by a UCC-1 Financing Statement properly recorded with the Secretary of State on February 11, 2009, on all of the Debtor's interest in the following personal property and all proceeds of such property:

"All machinery, equipment, furniture, fixtures, decorations, tools signs, small wares and all other items of tangible personal property, and all parts, accessories, attachments, additions,

accessions or replacements thereto or proceeds therefrom, including without limit, rights to payment and return premiums and insurance proceeds under insurance policies with respect to any of the foregoing now or in the future installed in, affixed to or used in the operation or ownership of debtor's facilities located at 1301 North Loop West, San Antonio, Bexar County, Texas Improved by Carino's Grill Restaurant and 3050 Silverlake Village Drive Pearland, Brazoria County, Texas Improved by Carino's Italian Grill Restaurant."

6. In addition, the Bank holds a second Promissory Note dated December 10, 2008 in the original principal amount of EIGHT HUNDRED FORTY FIVE THOUSAND FIVE HUNDRED DOLLARS (\$845,500.00) ("Note No. 2"). Note No. 2 was secured by certain real and personal property however, Debtor defaulted on Note No. 2 prior to the filing of its petition for relief. The deficiency balance owed by the Debtor to the Bank at the time this case was filed totaled \$630,085.26. The indebtedness owed under Note No. 2 is unsecured.

7. Both Notes are guaranteed by Creed Ford and Lynn Ford.

8. The Bank objects on the ground that the Plan proposes pursuant to paragraph 2.16 that upon of the confirmation of the Plan all guarantees and other obligation shall be modified to reflect the restructuring of the primary obligations under the Plan. The Plan further attempts to reduce the amount owed under any guaranty to the amount of the claim owed under the Plan. This is a blatant attempt to discharge the liability of the non-debtor guarantors in violation of 11 U.S.C. § 524(e). The Bank objects to any restructuring or modifications of the guaranties. The Plan is neither fair nor equitable.

9. The Plan also, in paragraph 2.16, states that confirmation shall result in the issuance of an injunction against the Bank from taking any action of any kind against any guarantor unless the Debtor defaults under the Plan. Thus, the Bank objects in that the injunctive relief sought through the Plan attempts additionally to impermissibly modify the Bank's rights *vis a vis* non-debtor guarantors.

WHEREFORE, PREMISES CONSIDERED, Independent Bank prays that confirmation of the Plan of Reorganization be denied and for such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of December, 2014, a true and correct copy of the foregoing document was served upon the parties on the attached mailing matrix via electronic means as listed on the Court's ECF noticing system or by email as indicated in the matrix.

/s/ Steve Turner

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